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North Valley Justice Court
14264 West Tierra Buena Lane
Surprise, AZ 85301

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	Supreme Court
)	No. R-18-0021
PETITION TO ADOPT)	
RULES OF SMALL CLAIMS)	Additional Comments and
PROCEDURE & MODIFY RULE)	Continued Objection to Some of
101(b), JUSTICE COURT RULES)	the Proposed Small Claims Rules
OF CIVIL PROCEDURE)	

In addition to my previously stated concerns, I now submit the following additional comments for consideration.

I.

THE CURRENT VERSION OF THE PROPOSED RULES SACRIFICE EFFICIENCY, TO ADVANCE AN ASPIRATIONAL CREED, THAT SELF-REPRESENTED LITIGANTS WILL BE MORE PREPARED IF WE FORCE THEM TO INTERACT WITH COURT PERSONNEL ON MULTIPLE OCCASSIONS.

The proposed rules operate under a belief that the parties should get together for an “initial hearing,” which may or may not be their actual hearing. A purpose of this initial hearing is to allow the judicial officer to explain any procedural defects, to explain what needs to happen next, and to answer any questions. While such a system may have merit, it generates multiple trips to the courthouse for self-represented litigants.

Eliminating written default judgments, eliminating an opportunity for many written motions, and eliminating a requirement to file an answer, will create a common fact pattern where a plaintiff must travel to a courthouse on four separate occasions. With the first trip, the plaintiff files the case. Because the hearing is set before the defendant is served, the plaintiff may need a second trip to the courthouse to request more time to serve the defendant. During the third trip, at the initial hearing (which has been rescheduled after the defendant was actually served), both the parties appear. However, the defendant says he is going to offer evidence that the plaintiff was not prepared to rebut (because the defendant did not file an answer). Consequently, another hearing date is set. In the fourth trip to the courthouse, the plaintiff will finally either have a hearing or will obtain a default judgment. Some examples from the pilot program confirm concerns about foreseeable inefficiency.

Although the small claims hearing officers did a commendable job of attempting to make the proposed rules work, a review of the FTR recordings of the pilot program's small claims proceedings on July 18, 2018, revealed predictable problems. Some examples are especially telling. In CC2018093966, both sides were present and were ready to proceed; but were told to come back on August 24, 2018. In CC2018095790, only the

Plaintiff appeared, but another hearing was set for August 24, 2018. In CC2018100347, both parties were present and were ready to proceed for an 11:00 a.m. slot; but were told to return at 3:00 p.m. A Plaintiff voluntarily dismissed two cases, CC2018086338 and CC2018086322, because they could not get the Defendant served prior to the initial hearing date.

In three other cases, CC2018106035, CC2018106052, and CC2018106162, there was some type of communication problem. In those cases, a finance company representative was prepared for one case but when he came to the courthouse, he discovered that four were scheduled. None of the other three defendants had been served and the cases were continued.

In CC2018102885, both sides were present and were ready to proceed, only to be told that their “formal hearing” would occur on August 24, 2018. The Defendant appropriately asked, “*I was hoping it was going to be taken care of today. I keep taking time off work. Is there any way we can find a resolution today?*” The Plaintiff immediately responded, “The only solution is for you to pay me.” After some additional discussion, the parties were again told to return on August 24, 2018. The complete data on the July 18, 2018 pilot program cases is contained within the following two tables.

Pilot Program Case Scheduling on 18 July 2018

Justice Court	Time	Number of Cases Set
Hassayampa	9:00 a.m.	6
Hassayampa	10:00 a.m.	5
Hassayampa	11:00 a.m.	4
Hassayampa	1:00 p.m.	3
Manistee	9:00 a.m.	1
Manistee	9:15 a.m.	1
Manistee	9:30 a.m.	1
Manistee	9:45 a.m.	1
Manistee	10:15 a.m.	1
Manistee	10:45 a.m.	1

**Results of Pilot Program Cases Heard on 18 July 2018
(24 Total Cases)**

Outcomes	Number of Cases
Plaintiff told to return to court another day (or later that afternoon)	12
Defendant told to return to court another day (or later that afternoon)	6
Only one side appeared	19
Small claims case was dismissed	8
Default judgment for Plaintiff	5
Complete small claims hearing held	0
Case settled with judgment	2
Case settled without judgment	0
Both sides failed to appear	2

The results of July 18, 2018 are only a snapshot and may not be reflective of the current state of the pilot program. In fact, as the pilot program has moved along, the results have gotten significantly better. However, the structural problems will remain.

One of the biggest problems is that nearly every plaintiff will appear for their initial small claims hearing having no idea what is going to happen. Abolishing a requirement for a written answer keeps the plaintiff from

knowing the defendant's case and requires the plaintiff to make an additional trip to court just to seek a default judgment. If the defendant has not been served, requests for extension of time must be made in person before a hearing officer. If there is a mistake, then the only remedy is to start over because the proposed rules prohibit amended complaints. The case would be required to be dismissed only to be immediately refiled

II.

IF JUSTICE COURTS IN PIMA COUNTY ARE EXEMPT, THEN OTHER JUSTICE COURTS SHOULD HAVE AN EQUAL OPPORTUNITY TO OPT OUT.

A policy decision has been made to exempt Pima County from the proposed small claims rules. Other courts would no doubt appreciate a similar option.

The Justice Court Rules of Civil Procedure (JCRCPP) allow for flexibility within an agreed upon framework and any small claims rules should as well. Standardization of court operations is normally a goal. For identical cases, why should the procedures be different in similar courts? The short answer is that flexibility often benefits everyone. JCRCPP130 and JCROP 131 give justice courts wide latitude on whether and if so, how to conduct pretrial conferences and settlement conferences. Some courts set every case where an answer has been filed for mediation. Others only set a

case for mediation after the judge has conducted a pretrial conference. Some courts hold pretrial conferences without the judge playing a meaningful roles. No way is necessarily right or wrong. Each way can work.

CONCLUSION

Please do not force justice courts to operate under these proposed small claims rules. These rules should be remanded to a committee and redrafted with a view toward utilizing time tested procedures that work well in other forums. However, the initial hearing concept needs to be abandoned.

RESPECTFULLY SUBMITTED, this 31st day of August 2018.

/s/ Gerald A. Williams
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